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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

16 Cr. 522 (RJS)

5 PASQUALE CAPOLONGO,

6 Defendant.

7 -----x

8 October 3, 2017

9 2:10 p.m.

10 Before:

11 HON. RICHARD J. SULLIVAN,

12 District Judge

13
14
15 APPEARANCES

16 JOON H. KIM

17 Acting United States Attorney for the
Southern District of New York

18 BY: AMANDA K. KRAMER

Assistant United States Attorney

19 MARTIN RASKIN

20 Attorney for Defendant

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1 (Case called)

2 THE COURT: Have a seat.

3 Thank you. Good afternoon.

4 Let me take appearances.

5 For the government?

6 MS. KRAMER: Good afternoon, your Honor. Amanda
7 Kramer, for the government.

8 THE COURT: Ms. Kramer, good afternoon.

9 For the defendant.

10 MR. RASKIN: Good afternoon, your Honor, Martin Raskin
11 on behalf of Mr. Capolongo, who is present in court.

12 THE COURT: Mr. Raskin and Mr. Capolongo, good
13 afternoon. Please take a seat.

14 You have some friends and family members here, is that
15 correct?

16 MR. RASKIN: No.

17 THE COURT: You are just here to watch. That is fine
18 too. Anybody who wishes to watch can watch, so thank you for
19 being here.

20 We are here for sentencing.

21 MR. RASKIN: We are, your Honor.

22 THE COURT: Mr. Capolongo pled guilty before we back
23 on May 12. I want to go over with everybody what I have
24 reviewed in connection with sentencing.

25 If I have left anything out, of course you should let

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1 me know. I have, first of all, reviewed the transcript of the
2 guilty plea that took place on May 12.

3 I was here for it, but I think it's a good practice to
4 go back and review what was said and what was discussed. So I
5 have done that.

6 I have also reviewed the probation report prepared by
7 the probation department. That report is 41 pages long, single
8 spaced. It is quite extensive. It also includes a sentencing
9 recommendation.

10 I have reviewed Mr. Raskin's sentencing memorandum,
11 which is nine pages double spaced with a number of attachments,
12 principally letters from friends and family members of Mr.
13 Capolongo. So I have read all those, and I thank those who
14 took the time to write.

15 I have reviewed the government's sentencing
16 memorandum, which is dated September 26. That is a ten-page,
17 single-spaced submission.

18 And then I have reviewed the consent preliminary order
19 of forfeiture and money judgment that was already issued in
20 this case and docketed at the time of the plea.

21 So that's what I have.

22 Is there anything that I have overlooked, Ms. Kramer?

23 MS. KRAMER: No, your Honor.

24 THE COURT: Mr. Raskin?

25 MR. RASKIN: No, your Honor.

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1 THE COURT: I should say that I have sentenced now I
2 think 11 other defendants in this case. This is a sprawling
3 case that's got about 46 defendants. I have sentenced I think
4 11 of them so far. Every time I sentence someone, there might
5 be some overlap of facts, and so I am informed by those
6 experiences as well.

7 The ranges of sentences are from time served to 84
8 months, which is Mr. Parrello's sentence at the high end, and
9 then yesterday, in case anybody missed it, I sentenced Anthony
10 Camisa to 66 months.

11 So, all right. Let me ask you, Mr. Raskin, have you
12 received a copy of the presentence report?

13 MR. RASKIN: Yes, your Honor.

14 THE COURT: You have reviewed it with your client?

15 MR. RASKIN: I have.

16 THE COURT: Do you have any objections to what is in
17 the report?

18 MR. RASKIN: I do not.

19 THE COURT: OK.

20 Ms. Kramer, you have received a copy of the
21 presentence report?

22 MS. KRAMER: Yes, your Honor. No objections.

23 THE COURT: No objections. OK.

24 So, Mr. Capolongo, you may remember on the day you
25 pled guilty I told you the different factors that a Court has

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1 to consider in fashioning a sentence. One of those factors
2 that I mentioned was the United States Sentencing Guidelines.

3 Do you recall that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: I explained how those work and what those
6 are, and I think I waved them around at some point.

7 So here's the book. This is the sentencing guidelines
8 book. This is a book that's put out by a commission, in this
9 case, the United States Sentencing Commission, which consists
10 of some judges and some lawyers and some experts in the field
11 of criminal law.

12 The way it works is that this book is designed to give
13 guidance to judges like me who have the responsibility of
14 imposing sentences on real people. So, for every crime or type
15 of crime, there is a chapter in this book, and the judge in a
16 particular case is instructed to go to the chapter that relates
17 to the crime that the defendant pled guilty to or was convicted
18 on, and once in that chapter, the judge is prompted to make
19 certain findings, findings of fact.

20 And so there is a chapter on gambling, and the judge
21 in that chapter is prompted to make findings about the amount
22 of the gambling activity, the dollar value. The judge might
23 also consider things like whether the defendant was a leader or
24 an organizer of criminal activity that was extensive and other
25 things that might cause the judge to increase the offense

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1 level.

2 So, the judge's task is to basically make findings.
3 Based on those findings, the judge assigns points. The judge
4 then adds those points up and comes up with a number. That
5 number is the offense level.

6 The judge then goes to another chapter in this book
7 and that's the chapter that relates to criminal history. Not
8 surprisingly, people who have been convicted before, people who
9 have gone to prison before, they are typically going to be
10 treated more harshly than people who have no prior convictions
11 or convictions that resulted in very short periods of time in
12 prison.

13 So I would go to the chapter on criminal history. I
14 will make findings about whether there were prior convictions,
15 when they were, and how long the sentences were.

16 Based on the answers to those questions, I will assign
17 points. I'll come up with another number after I add up all
18 the points. That number is referred to as the criminal history
19 category.

20 There are six criminal history categories. Category I
21 the lowest; category VI is the highest. With those two numbers
22 I talked about, the offense level on one hand and the criminal
23 history category on the other, I will then go to the back of
24 the book, where there is a table or grid, sort of a chart.
25 There is a column is here on the far left, which is the offense

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1 level column. I will go down that column. It's numbered 1
2 through 43, and I will keep going until I get to the number
3 that I have found to be appropriate in this case.

4 I will then go across these other columns from left to
5 right, each of which reflects a criminal history category, I
6 through VI. I will keep going until I get to the one that is
7 appropriate. I will stop there.

8 Where my finger rests on this chart, that is the range
9 that in the view of the commission that prepared this book
10 would be appropriate. It is a range in terms of months.

11 So that's how this book works. We are going to spend
12 a little bit of time talking about it and how it applies in
13 this case. It can seem a little dry, but it is important.

14 This is not the whole ballgame. This is not
15 mandatory. I don't have to follow this book. I'm free to
16 sentence above or below the range in this book. There are
17 other factors that are just as important as this book. I will
18 mention those in a minute, but for now we are going to focus on
19 the calculation as it applies here.

20 Any questions so far, Mr. Capolongo?

21 THE DEFENDANT: You have been very thorough.

22 THE COURT: It is important so I want to make sure you
23 understand. If at any point you have any questions, let me
24 know.

25 OK. According to the presentence report, beginning on

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1 page 19, the probation department sets forth its view as to how
2 the guidelines apply here. There is a base offense level of 12
3 because of the gambling activity that was involved.

4 Pursuant to Section 2E3.1, there is then a two-level
5 reduction because you accepted responsibility by pleading
6 guilty before trial, so that's level 10. That puts you down to
7 level 10.

8 There was an agreement between you and the government
9 in this case, along with about 35 other defendants, each of
10 whom agreed to plead guilty by a certain date in order to break
11 the logjam, to sort of clear up and resolve what was otherwise
12 a sprawling, very labor-intensive case.

13 So, in exchange for helping break that logjam, for
14 making things move efficiently, the government agreed that if
15 you pled by a certain date and a critical mass of other
16 defendants did the same that you would be entitled to a
17 one-level reduction, an extra one point off.

18 Now, I am not bound by that. That is an agreement you
19 had with the government. I don't have to follow that. But in
20 this case I'm prepared to. I have in all the other defendants
21 that I've sentenced so far. It seems to me that that strikes a
22 good balance between the need to efficiently resolve a case
23 like this and to reward those who agreed to plead guilty in a
24 pretty fast and efficient way without overrewarding it. So one
25 level strikes me as appropriate. So I am going to reduce your

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1 offense level one more level. That puts you at level 9.

2 Now you have a number of prior convictions. It's a
3 sort of staggering number of prior convictions.

4 You have a conviction from 1981, when you were about
5 30, for possession of gambling records. That resulted in a
6 10-day term of imprisonment.

7 You then had another one a couple of years later, in
8 1983, possession of gambling records. That also led to a
9 sentence of imprisonment, relatively short, 45 days.

10 1984, same charge, also convicted 1984 to 60 days'
11 imprisonment.

12 Another 1984 conviction resulting in a sentencing of
13 30 days' imprisonment.

14 A month later, another 1984 that resulted in a \$1,000
15 fine in November.

16 1985, a 90-day term of imprisonment, also for
17 possessing gambling records.

18 1986, also promoting gambling in the second degree, a
19 \$1,000 fine.

20 1987, possession of gambling records again, \$1,000
21 fine.

22 1989, promoting gambling in the first degree in Nassau
23 County. That resulted in a sentence of sixteen months to four
24 years.

25 Once you got out -- well, no, then you had -- no,

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1 that's right.

2 Then four years later, about three and a half years
3 later, you had another conviction for promoting gambling in the
4 first degree. This time in Westchester. That resulted in a
5 16-month to four-year sentence.

6 And then 1999 an eighteen-month to three-year sentence
7 for promoting gambling in the first degree in the Bronx.

8 In 1998, you were arrested for extortion in Brooklyn
9 in a federal case.

10 And then in 1999 you were sentenced to 46 months'
11 imprisonment and three years of supervised release.

12 For that you get three criminal history points, as you
13 did for the 1999 conviction in the Bronx. Three criminal
14 history points.

15 Then you had another conviction in 2016 for promoting
16 gambling in the first degree in Rockland County. That resulted
17 in a conditional discharge, and that doesn't result in any
18 additional points because that sounds like it was part of the
19 same conduct that you are being sentenced for here today.

20 That is a lot of convictions. Ultimately, six
21 criminal history points, and that puts you into Criminal
22 History Category III.

23 So does anybody disagree with that?

24 MR. RASKIN: We agree with that, your Honor.

25 THE COURT: You agree with that.

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1 Ms. Kramer, you agree also?

2 MS. KRAMER: Yes, your Honor.

3 THE COURT: According to the presentence report there
4 is another charge that's pending in Florida for racketeering
5 and bookmaking in Broward County. I don't know much about
6 that. It says the defendant is scheduled to enter a guilty
7 plea in July of 2017. So that's come and gone. What is going
8 on with that case?

9 MS. KRAMER: Your Honor, the defendant is scheduled to
10 be sentenced on October 11. Our understanding from the
11 prosecutor in that case is that they are awaiting the
12 sentencing in this case so that if the judge wants he can run
13 the sentences concurrent so that the defendant can serve any
14 time in federal prison.

15 In connection with that case, the state law
16 enforcement seized gambling ledgers and \$526,000 from the
17 defendant at the time of his arrest in that case.

18 THE COURT: OK.

19 MS. KRAMER: So he's scheduled to be sentenced in less
20 than a week or actually eight days.

21 THE COURT: All right.

22 Then there is another 1976 and 1991 case. One was
23 reversed on appeal. That's the 1991.

24 The '76 there is no information available, so I am not
25 going to consider it unless there is additional information you

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1 want to share with me.

2 No?

3 MR. RASKIN: No, your Honor.

4 THE COURT: All right.

5 So, offense level of 9, Criminal History Category of
6 III yields an 8 to 14 month range.

7 But, as I say, I am free to go above or below, and
8 given this criminal history, that's certainly something to
9 think about it, including the recent criminal history.

10 There are, however, other factors that are just as
11 important. So I want to remind you of what those are.

12 Mr. Capolongo, I told you back when you pled guilty
13 what they were, but just so you know or just so you remember,
14 they include -- in addition to these guidelines they, first of
15 all, require me to consider your own personal history. So I
16 have to look at your whole experience, not just this crime, but
17 everything that makes you who you are.

18 You are a unique individual. You are different than
19 anybody I've ever met or sentenced or will meet or will
20 sentence, and I have to make sure that the sentence I impose
21 here in this case is tailored to you as a person.

22 So I have to look at the whole person. That means
23 from your birth right up until now. So I've gotten some
24 letters that tell me more about you than I would otherwise
25 know, and it's helpful to know that, people who speak very

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1 highly of your character and your kindness and your generosity,
2 and those are good things to know.

3 There are things also in the presentence report that
4 are very specific to you that are relevant to my determination
5 as to what's an appropriate sentence, including your criminal
6 history. I mean, that is partly covered by this, but it's not
7 fully covered by this if one considers the sheer number of
8 prior convictions.

9 So those are things I have to consider.

10 Another factor that I have to consider involves the
11 facts and circumstances of this crime. This is a serious
12 crime, and I have to make sure that the sentence I impose
13 reflects the seriousness of this crime, that it promotes
14 respect for the law, but it also provides a just punishment for
15 this crime. So that's another factor that I have to take into
16 account.

17 I have to consider the need also to deter or
18 discourage you and other people from committing crimes of this
19 kind in the future.

20 That's the hope, that by imposing a sentence on you in
21 this case today, I'll send a message to you so that you just
22 get it through your head that you can't do this anymore.

23 Given the number of prior sentences, the number of
24 months that you have previously served, it is a not clear to me
25 that much of anything is going to get through, but I have to

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1 consider that.

2 I also have to consider the impact of this sentence on
3 other people who might learn about your sentence and what
4 impact that will have on them and their likelihood to commit
5 future crimes. So I have to consider that, use my best
6 judgment.

7 I have to consider your own needs while you are in
8 custody. You look to be pretty healthy, but you are of an age
9 at which people have health issues that have to be monitored
10 and have to be treated. So I have to make sure that those
11 health issues are going to be addressed for any period of
12 incarceration that I impose, and there might be other things
13 unrelated to health that still require that whatever sentence I
14 impose allows you to get treatment, to get some sort of
15 programming.

16 So, for example, some people have substance abuse
17 treatment needs that have to be addressed, some have mental
18 health treatment needs. Some of the younger defendants I
19 sentence really just need the opportunity in many cases to get
20 a GED or to learn a skill or a trade.

21 So those are all things that I have to consider.

22 And then another factor, the last one I guess that's
23 worth mentioning, is the need to avoid unwarranted disparities
24 between you and other similarly situated defendants. That's
25 the hope, that by imposing a sentence on you here today that I

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1 will sentence you consistently with how other judges have
2 sentenced, and I guess not just other judges, me too, how other
3 individuals have been sentenced who have engaged in similar
4 conduct where they have similar histories as yourself. So
5 there is a need for consistency. That's really what it's
6 about.

7 So my job is to balance all of those things and to
8 come up with a sentence that I think is appropriate in light of
9 those different factors.

10 So that's sometimes more of an art than a science.
11 What we will do now going forward is, I have read all the
12 letters and submissions. I will then ask the lawyers if
13 there's anything else they would like to say. I will start
14 with Mr. Raskin. I will then give Ms. Kramer a chance to
15 speak.

16 Once they have done that, I may have some questions.
17 Then after that I will give you an opportunity to speak, if you
18 would like. You are not required to, but you certainly have a
19 right to.

20 That's the drill.

21 Do you have any questions about any of that?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: So, Mr. Raskin.

24 MR. RASKIN: Yes, your Honor.

25 I know that the Court has read everything, and I will

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1 not dwell on what we have filed and what is contained in the
2 presentence report.

3 I just want you to know that the Pat Capolongo
4 standing before you today for sentencing is not the same Pat
5 Capolongo who was involved in the charges in the information.

6 THE COURT: Why do you say that?

7 MR. RASKIN: Since that time, he's retired.

8 THE COURT: Retired from what?

9 MR. RASKIN: Well, the most recent thing that he was
10 doing was working for his brother's landscaping firm.

11 How long have you been retired now?

12 THE DEFENDANT: About six years. Six or seven years.

13 MR. RASKIN: Six years. He is retired. He is in ill
14 health.

15 The presentence investigation report lists the
16 ailments and the doctors that he's seeing for his health. He
17 literally stays home these days caring for his grandchildren,
18 ages 8 and 4, drives them to school, cooks for them, takes them
19 to afterschool activities, and takes care of all of the other
20 things that they need while their mother both works and goes to
21 school.

22 THE COURT: How long has he been doing that?

23 MR. RASKIN: Since they were born.

24 THE DEFENDANT: About eight years.

25 THE COURT: That's the point. It hasn't stopped him

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1 from engaging in this kind of conduct, right?

2 MR. RASKIN: He's also been on bond for years now.
3 This is the third case, and he clearly has not been involved in
4 illegal activities for the years that he's been on bond.

5 We recognize that as a --

6 THE COURT: The Broward County case he was arrested in
7 2015.

8 MR. RASKIN: Yes. Then there was a Rockland County
9 case before that. I think that might have been '14.

10 THE COURT: That was 2014.

11 MR. RASKIN: Yes. So he's been to bond since then in
12 three jurisdictions.

13 Again, we certainly do not dispute the fact that
14 Mr. Capolongo has been a lifelong gambler. He has been and he
15 was involved in the gambling business in this case, so that's
16 why he pled guilty.

17 He was both a pay and collect person for an offshore
18 Internet site, and he bet on behalf of himself and others on
19 sporting events.

20 In the Florida case -- I mean, I would submit that
21 these three cases have opened his eyes. He's paid dearly. In
22 the Florida case he forfeited over \$500,000, which was
23 literally his life savings in a safe deposit box.

24 THE COURT: In 1999 he got 46 months at the age of 50.
25 That was a pretty serious operation, and it didn't prevent him

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1 from going back to it.

2 MR. RASKIN: Yes.

3 You know, again, he wasn't in trouble again until this
4 series of related cases.

5 THE COURT: It doesn't mean he wasn't doing it. It
6 means he didn't get caught. I don't know.

7 MR. RASKIN: I would submit that perhaps he wasn't
8 doing it. I am hard pressed to tell you what he was or wasn't
9 doing then, Judge. I'm sorry.

10 Nobody is more contrite at this point than
11 Mr. Capolongo on how his misconduct has affected not only him,
12 but his family and those around him. You have read the letters
13 presented. You know that, according to his friends and family,
14 this is a well loved, good and decent man.

15 We reviewed the presentence report. We saw
16 probation's recommendation of four months' imprisonment, three
17 years supervised release, with four months' home detention.

18 We think it is appropriate. We think the Court should
19 impose it. We think that it is sufficient, but not greater
20 than necessary, to meet the goals of 3553.

21 If the Court imposes that kind of a sentence, he can
22 server it get back to his family and caring for his
23 grandchildren in the not-too-distant future. So we are asking
24 the Court to accept probation's recommendation.

25 THE COURT: All right.

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1 Thank you, Mr. Raskin.

2 MR. RASKIN: Thank you.

3 THE COURT: OK. Ms. Kramer, is there anything you
4 would like to say.

5 MS. KRAMER: Thank you, your Honor.

6 I am perplexed by the claim that the defendant has
7 been retired for eight years, because paragraph 110 of the
8 presentence investigation report says that he's been retired
9 over the course of the last 20 years.

10 So I am not sure exactly what the timing is of his
11 retirement according to the defendant. But, as evidenced by
12 the recordings in this case, he clearly has not been retired
13 from his criminal gambling activity, and his criminal history
14 really speaks for itself. This is a case that really cries out
15 for a guidelines sentence to effect specific deterrence.

16 THE COURT: Yesterday the government was arguing for
17 an above-guideline sentence for Mr. Camisa, who was 21 when he
18 engaged in most of the crimes.

19 There was violence associated with it, but it was
20 collecting debts from a gambling operation that was in essence
21 this gambling operation or a parallel gambling operation, but
22 that was one where the government was seeking an upward
23 departure on a sentence that was already basically going to be
24 over five years.

25 This is an individual, Mr. Capolongo, who's got, by my

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1 count, 15 prior convictions, all for gambling activities. He
2 served lengthy sentences as an adult, as a grown man, a mature
3 man in his 50s. Yet he still has this case and then another
4 case in Florida where he's still going to be sentenced.

5 I am just thinking why you are not seeking an upward
6 departure here?

7 MS. KRAMER: Well, the obvious distinction between the
8 two cases, your Honor, is the violence that was used by
9 defendant Camisa in his collection of the debt.

10 THE COURT: Right.

11 MS. KRAMER: Which obviously takes it into a very
12 different category.

13 While there was gambling debt that was collected and
14 this defendant was involved in a gambling operation -- are you
15 having trouble hearing me?

16 MR. RASKIN: Yes, I was having trouble.

17 MS. KRAMER: My apologies.

18 MR. RASKIN: May I sit here, your Honor?

19 THE COURT: That is fine.

20 MR. RASKIN: Thank you.

21 MS. KRAMER: So while the debt that was the subject of
22 the violent collection effort and the kidnapping in that case
23 was a gambling debt, what was notable about it is the violence
24 and is the use of the weapon. So that was the reason there.

25 Here there have been a lot of gambling defendants in

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1 this case who have received below-guidelines sentences.

2 THE COURT: No, I don't think many.

3 MS. KRAMER: No?

4 THE COURT: I mean, there are guidelines sentences --
5 if your zone A or you are zone B --

6 MS. KRAMER: Correct. Excuse me, your Honor. Who
7 have received noncustodial sentences, but that were guideline
8 sentences --

9 THE COURT: Yes.

10 MS. KRAMER: -- because of the allowance for home
11 detention within a guidelines range in the lowest zone.

12 In this case, your Honor, a guidelines sentence is not
13 as long as what this defendant has served before, but the
14 nature of his criminal conduct is just not as dangerous as that
15 of Anthony Camisa's.

16 THE COURT: I am not saying he's dangerous. There is
17 no evidence that in this conspiracy that Mr. Capolongo was
18 toting guns or ordering that people be threatened.

19 But, on the other hand, the sheer number of
20 convictions makes this a wildly different than most of the
21 other gambling defendants, at least the ones I've sentenced.

22 Would you agree to that or no?

23 Or am I mistaken?

24 MS. KRAMER: That's correct, your Honor.

25 THE COURT: Then, in terms of the amount of the

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1 evidence, it seems that you were up on Mr. Capolongo's phone.

2 Is that what it was?

3 MS. KRAMER: There was a state wire.

4 THE COURT: So, there was a wiretap on his phone and
5 that might account for why there's so much more about him
6 that's sort of described in the offense section of the
7 presentence report, much more than for some other of the
8 defendants in this conspiracy.

9 But it sort of seems like Mr. Capolongo is running at
10 a different place than a lot of the other folks I have
11 sentenced.

12 He's in conversations in which he's sort of trading
13 insults with Mr. Merlino about who's a rat and who's not a rat.
14 And Mr. Capolongo is involved in a \$100,000 collections, right?

15 I am looking at paragraph 43.

16 This is a 100,000 gambling debt, right?

17 MS. KRAMER: Yes, your Honor.

18 MR. RASKIN: What was that, your Honor?

19 THE COURT: A hundred thousand dollar gambling debt in
20 paragraph 43 is being referred to.

21 MR. RASKIN: That is not true.

22 THE COURT: If it's not true, then we should have a
23 hearing on it. Nobody is objecting to what I'm -- I will read
24 the paragraph.

25 "The CW placed another call to Allen, during which

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1 Allen insisted that no deal was ever made."

2 This was with respect to the loss of \$300,000
3 belonging to the Costa Rican gambling operation.

4 Allen said that CC6" -- whoever that is -- "Capolongo,
5 and a guy they referred to as Taylor who was in jail with
6 Merlino had a conversation about the debt owed by Camacho and
7 the CW. A short time after this call, the CW called Capolongo
8 and again expressed concerns about Taylor coming after him.
9 Capolongo said that Capolongo had dinner with Taylor, and that
10 Capolongo told CC6 that he would handle the situation.

11 "CW told Capolongo that Taylor offered Merlino a
12 hundred thousand dollars to collect the money from the CW and
13 that the CW is with Parrello and not Merlino."

14 Then there is another meeting in which Merlino
15 instructed the CW to, Tell Capolongo, listen, I was told not to
16 pay you. Don't use my name.

17 And then you later call Merlino a broken down valise.
18 I don't know what that means. And then there's trades of
19 insults about who's a rat and who's not a rat.

20 Then the CW explained to Taylor that Capolongo gave
21 the pay-and-collect job for CIRS to Camacho, and Camacho lost
22 the money.

23 The CW also told Taylor that Camacho was paid back
24 \$250,000, and that Camacho makes payments to Tognino.

25 At any rate, there's a lot of money involved here that

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1 is not true of all of the other defendants that I have
2 sentenced. If there is a dispute about that, if there's
3 objections, then let's talk about it.

4 MR. RASKIN: My understanding of this is that
5 Mr. Capolongo kind of felt responsible, but he is the one that
6 got the confidential witness the job of paying and collecting
7 for the offshore site.

8 Then, when the confidential source lost or stole the
9 money, Mr. Capolongo was embarrassed and felt that perhaps he
10 could help. There was nothing about him being involved in
11 violence.

12 All he said, basically told Taylor not to get involved
13 with that. He would try to take care of it with the offshore
14 gambling site.

15 That's our understanding of what happened there.
16 Certainly he had nothing to do with offering or dealing with
17 Merlino concerning collecting that money.

18 THE COURT: All right.

19 Then another question I had is about Mr. Lacava.
20 According to what's in the presentence report, Lacava took over
21 the courier position from CC1, paying and collecting money for
22 Capolongo in connection with the illegal sports gambling
23 business; and that the CW met with Lacava many occasions to pay
24 and collect from Capolongo.

25 So Mr. Lacava is sort of doing the work on behalf of

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1 Mr. Capolongo, right?

2 MR. RASKIN: It was for betting and again --

3 THE COURT: I'm not saying it is violence.

4 MR. RASKIN: There was betting. He was in the
5 gambling business. He pled guilty to it. He is guilty of it.

6 Mr. Lacava was simply -- he was -- Mr. Capolongo was
7 in Florida, Mr. Lacava was in New York, and he collected some
8 money on behalf of Mr. Capolongo.

9 THE DEFENDANT: That's correct, your Honor.

10 THE COURT: I guess that's one of my questions, is the
11 relationship between Mr. Lacava and Mr. Capolongo. It sounds
12 like Mr. Capolongo hired or recruited Mr. Lacava to do his work
13 for him up here.

14 Is that right?

15 MR. RASKIN: To collect on bets that he made.

16 THE COURT: Right.

17 MR. RASKIN: Again, there were lots of wiretaps, not
18 only in this case but in the Broward case and in the Rockland
19 case.

20 While I haven't heard the Rockland tapes, I have
21 heard -- or read the transcripts or notations of the
22 conversations in both of other cases.

23 When I tell you 98 percent of the conversations with
24 Mr. Capolongo are personal betting or betting talking about
25 sporting events, talking about -- it's as a gambler, your

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1 Honor. Simply as a gambler.

2 Again, he did gamble on behalf of himself and on
3 behalf of others, and he did act as a pay-and-collect person
4 for the offshore site until he stopped and the CW took over for
5 him. That's really what he did in this case and in the other
6 cases. There's no difference.

7 THE COURT: OK.

8 I guess one question I have, then is should there not
9 be some kind of leadership role, supervisory role for
10 Mr. Capolongo in light of the fact that he recruited
11 Mr. Lacava? That's what it reads like in the presentence
12 report.

13 Let me ask the government, and then I will come back
14 to you, Mr. Raskin?

15 MS. KRAMER: So, your Honor, it is a little bit of a
16 difficult question when it comes to the defendants who are
17 involved in the gambling schemes in this case as to whether
18 there should be leadership points attributed.

19 We engaged in a lot of internal discussion about this.
20 Because of the fact that inherent in these gambling operations
21 is some amount of hierarchy, so someone is placing bets for
22 someone else, someone is collecting, the very nature of the
23 offense itself involves working with others, and in some cases
24 giving direction to others.

25 THE COURT: Well, look, yesterday I had Mr. Camisa,

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1 and Mr. Camisa it looked like was sort of acting at the
2 direction of Mr. Casablanca. It seems like Mr. Casablanca is a
3 supervisor or manager or leader or organize he of that
4 activity, and the guidelines calculation ought to reflect that.

5 I am not sure why the same wouldn't be said for
6 Mr. Capolongo vis-a-vis Mr. Lacava. What is the difference?

7 No violence that I am aware of, though collecting, it
8 would seem to me is sort of it's inherent in the collecting
9 business that if you don't collect or if people don't pay up
10 that there are consequences. But nobody is suggesting that
11 there were any threats made, so I am not going to make any
12 enhancements for that.

13 But why not? Why is there no role enhancement here?

14 MS. KRAMER: Well, I think reasonable minds could look
15 at the conduct in the case and come to two different
16 conclusions about whether a role enhancement should apply.

17 There are a number of defendants where there seems to
18 be some direction that they are either taking or giving to
19 others, but what we know about them is not necessarily that
20 they functioned as a leader.

21 It's really the nature of the criminal conduct that
22 working as a part of this type of gambling operation involves
23 some amount of directing others. So, having some intellectual
24 discourse about whether leadership should apply and seeing that
25 there were two sides, we opted to take the view that was most

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1 favorable to the defendants when making a close call with
2 respect to the gambling operation because of the nature of the
3 operation itself.

4 THE COURT: We have CC1 and then we have Lacava, each
5 of whom are paying and collecting money for Mr. Capolongo,
6 right?

7 MS. KRAMER: That's correct, your Honor.

8 THE COURT: And they get paid by whom?

9 MS. KRAMER: By Mr. Capolongo, your Honor.

10 THE COURT: OK.

11 Is there anybody else who is doing a comparable thing
12 on behalf of Mr. Capolongo?

13 MS. KRAMER: I don't believe so, your Honor.

14 THE COURT: OK.

15 Mr. Raskin, that sounds to me like two points; not
16 four, not three, but two.

17 So why is that mistaken? Maybe three. I mean, it is
18 extensive activity, so I guess it could be three.

19 MR. RASKIN: Mr. Capolongo and Mr. Lacava are longtime
20 friends.

21 This simply happened because Mr. Lacava was in New
22 York, the bets were made in New York, or the people with whom
23 the bets were made were in New York, and Mr. Capolongo was in
24 Florida.

25 He certainly wasn't an employee. He did it simply as

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1 a favor to his friend of many years. So we don't think, we
2 agree with the government that --

3 THE COURT: He just did it as a friend? That's what
4 you are saying? This is just sort of once-in-a-while thing
5 between friends?

6 MR. RASKIN: Yes.

7 THE COURT: OK.

8 Ms. Kramer, do you concur with that characterization?

9 MS. KRAMER: No, your Honor.

10 THE COURT: So maybe we do need a hearing then.

11 What would you understand the relationship to be based
12 on the evidence that has been collected?

13 It is not just a once-in-a-while thing between
14 friends. It's what? A regular thing that he works for,
15 answers to, and is paid by Mr. Capolongo?

16 MS. KRAMER: I don't know if I would say it is a
17 regular thing, your Honor. But I don't think it was based on
18 just doing a favor as a friend.

19 I think with respect to this type of gambling
20 operation there is a question of whether, you know in a
21 conspiracy there may be individuals who at times give
22 direction, at times receive direction, and they don't all get
23 leadership enhancements based on the role that they played at
24 those different times.

25 I think in the criminal gambling business that we are

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1 talking about, there are different roles that people play, and
2 it doesn't necessarily give rise to a leadership enhancement.
3 I don't think this was a favor that was being done as a friend,
4 but I do think there is a reasonable basis to not assign
5 leadership points here.

6 THE COURT: Then tell me about the relationship or the
7 roles played by Mr. Capolongo and Mr. Tognino?

8 How do they compare?

9 MS. KRAMER: I think this defendant, your Honor, is
10 more serious, more culpable, and has been involved for four
11 decades in this crime. So I think, putting them side by side,
12 this defendant is more culpable.

13 THE COURT: OK.

14 Do you want to respond to that, Mr. Raskin?

15 MR. RASKIN: I am not in a position to respond, your
16 Honor.

17 THE COURT: I will give you an opportunity, but you
18 don't have to. Thank you.

19 Ms. Kramer, anything else you would like to say with
20 respect to sentencing?

21 MS. KRAMER: No, your Honor.

22 Thank you.

23 THE COURT: Anything else you would like to say,
24 Mr. Raskin?

25 MR. RASKIN: No, sir.

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1 THE COURT: Mr. Capolongo, anything you would like to
2 say?

3 You are not required to, but you're welcome to.

4 THE DEFENDANT: I am just very sorry for all this
5 trouble.

6 THE COURT: OK.

7 THE DEFENDANT: Did you hear that.

8 THE COURT: I did.

9 That is fine. Thank you.

10 What I would like to do is take a short break to
11 collect my thoughts, think about what we have been discussing
12 today, and I will come back in about ten minutes.

13 At that point I will tell you the sentence I intend to
14 impose, I will explain my reasons, and I will check with the
15 lawyers to make sure I am not doing something illegal.
16 Assuming I haven't, I will then formally impose the sentence at
17 that point.

18 Sorry to drag this out, but I get up in the morning
19 with a view as to what I'm probably going to do, but I want to
20 remain open minded, so I can listen to the lawyers and listen
21 to the defendant and make sure that I am giving them a full
22 hearing and I'm open to being persuaded and moved by some of
23 the arguments that are being made here. Otherwise what would
24 be the point.

25 Let me think about what I have heard and we will be

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1 back shortly.

2 Thank you.

3 About ten minutes.

4 (Recess)

5 THE COURT: Have a seat. Thank you.

6 All right. Thanks for your patience.

7 I only get to do this once so it's important that I
8 have an opportunity to really think it through and to consider
9 all the arguments that have been made and all the facts that
10 have been presented.

11 There are a lot of facts here that require a lot of
12 consideration.

13 On the one hand, I have letters from folks who know
14 you best, and they seem to say that you are a decent guy, and
15 obviously you have made a difference in their lives, and I
16 credit that. I have no reason to doubt it.

17 It sounds like you play a meaningful role in the lives
18 of your grandkids and that whatever sentence I impose here is
19 going to have an impact on them, and I don't think that
20 lightly. I think that is a real thing and your relationship
21 with them is to your credit and to their benefit, and so I
22 believe it. I give credit to that.

23 On the other hand, I mean, I just look at the sheer
24 number of convictions here, which sort of just takes this into
25 a totally different place than most of the defendants that I

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1 have encountered so far and the length of the sentences.

2 I mean, there is a series of convictions for gambling
3 records and promoting gambling that result in 30 days and 45
4 days and 90 days and fines and then you get 16 months to four
5 years in 1991, 16 months to four years in 1995, 18 months to
6 three years in 1999 --

7 THE DEFENDANT: Excuse me, your Honor.

8 THE COURT: Yes.

9 THE DEFENDANT: They're wrong.

10 THE COURT: They're wrong?

11 Then we better clean this up.

12 THE DEFENDANT: I only went to jail twice in my life,
13 the Nassau County case and the federal case for 46 months. I
14 never did these other times at all.

15 THE COURT: They may have been concurrent. I don't
16 know.

17 THE DEFENDANT: No.

18 THE COURT: Then I think we have to put this off. If
19 there are objections to what's in the report, then those
20 objections should have been made.

21 THE DEFENDANT: I've only been in prison twice. I
22 just want you to make note of it. The Nassau County case --

23 THE COURT: The Nassau County case was 16 months to
24 four years.

25 THE DEFENDANT: I had one and a half to three there,

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1 and the 46 months that I did. That's it.

2 THE COURT: Let me finish.

3 So you got sentenced in October of 1991 in Nassau
4 County, and it says you got paroled in 1995, in May of 1995.

5 THE DEFENDANT: I did a year. I don't know what that
6 comes to.

7 THE COURT: That looks like more than a year.

8 THE DEFENDANT: I did a year, your Honor. That is it.
9 Period.

10 THE COURT: Then there is a Westchester case where the
11 sentence imposed was 16 months to four years. It doesn't say
12 when you got out.

13 All it says here is that you were convicted after a
14 jury trial.

15 THE DEFENDANT: Is that the federal case?

16 THE COURT: No.

17 THE DEFENDANT: I never -- hang on.

18 I know what happened. I was doing federal time, the
19 46 months' case, and they ran it concurrent with the
20 Westchester County case. That was it.

21 THE COURT: The Westchester County case, the sentence
22 was imposed in 1995.

23 THE DEFENDANT: I didn't do no time in Westchester.

24 THE COURT: The federal case was not imposed until
25 1999, so I don't know that would be concurrent.

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1 You did have a 1999 Bronx County conviction, and then
2 a 1999 federal conviction in the Eastern District.

3 THE DEFENDANT: Right. That is correct. I didn't do
4 the Westchester County time, and I didn't do all these other
5 times.

6 The only other time was Nassau County, one and a half
7 to three. I did a year.

8 THE COURT: All right. I would like truthful
9 information. I would like accurate information. If there's
10 mistakes in the presentence report, that should be brought to
11 my attention.

12 THE DEFENDANT: I didn't do 30 days, 45 days, 60 days,
13 none of them.

14 THE COURT: They may have been suspended sentences,
15 but --

16 THE DEFENDANT: I'm getting old, but I am not that --
17 that I forget that much.

18 THE COURT: OK.

19 So then we will put this off. How long do you need to
20 correct the criminal history?

21 You should sit down with Mr. Capolongo and figure out
22 what it is that he really did serve. Where that is
23 inconsistent with what's in the presentence report, I guess I
24 want to know it.

25 MR. RASKIN: What we are disputing I guess is the

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1 number of times he actually went to jail, not convictions.

2 Those convictions are accurate. We just believe -- again, he's
3 been to jail twice.

4 THE COURT: What it says is what it says. He got
5 sentenced to ten days in 1980. It says fine paid.

6 Maybe it was a fine in lieu of the ten days.

7 45 days' imprisonment in 1983, fine paid. Maybe that
8 was in lieu of the time.

9 1984, 60 days' imprisonment, fine paid.

10 Then there's 1984, 30 days' imprisonment, fine paid.

11 Maybe those were all fines. I don't know.

12 THE DEFENDANT: Yeah.

13 THE COURT: Then we have 1985, 90 days' imprisonment,
14 fine paid.

15 We have then promoting gambling in the first degree,
16 Nassau County, sixteen months to four years.

17 THE DEFENDANT: That's correct.

18 THE COURT: It says paroled May 2, 1995.

19 MR. RASKIN: Does that sound right?

20 THE DEFENDANT: I did a year there, your Honor.

21 THE COURT: That is not what it says here.

22 Then we have --

23 THE DEFENDANT: How can we get those records?

24 THE COURT: It says 1995, sixteen months to four years
25 imprisonment, \$180,000 fine, convicted after a jury trial on

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1 April 22, 1992. So I don't know what the real story is there.

2 Then I've got 18 months to three years in the Bronx,
3 1999.

4 It doesn't say when you got released there. It says
5 you plead guilty April 20, 1999.

6 It sound like what happened is sort of like you're
7 doing now, you waited until the federal case is done, then you
8 get yourself sentenced in the state to avoid the extra criminal
9 history points, and then you can get concurrent time and you
10 are no worse for it on a federal sentence.

11 It is a game that people play. It is not an unwise
12 game, but it is a game. Ultimately there is no hiding behind
13 the fact that these are all real convictions

14 THE DEFENDANT: They are all convictions, your Honor.
15 I am not denying that. Believe me. I didn't do this time.

16 MR. RASKIN: He's just saying he's been to jail twice.

17 THE COURT: I would like to know exactly what the
18 length of sentence was that was actually served. If there are
19 errors in what was imposed, I want to know that too.

20 MR. RASKIN: If that is something that will affect
21 your sentence, your Honor, then we will need some additional
22 time to try to straighten it out.

23 THE COURT: That is fine.

24 I guess, while we are at it, I would like to know more
25 about the Florida case. That sentencing is pending?

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1 MR. RASKIN: Yes.

2 THE COURT: Ms. Kramer, is that the same conduct as
3 here, or is that different conduct.

4 MS. KRAMER: It's forms a part of the conduct here.

5 THE COURT: All right.

6 MS. KRAMER: So it's connected to the conduct here in
7 one of the schemes.

8 THE COURT: Well, I mean, for the Rockland County
9 case, what probation says is that this conviction arises out of
10 relevant conduct that was a part of the instant offense. So
11 that won't count and doesn't count for criminal history
12 purposes.

13 Is the same true with respect to the Florida Broward
14 County case?

15 MS. KRAMER: I believe so, but I would like to confirm
16 that for your Honor.

17 THE COURT: I would like that to be confirmed.

18 MR. RASKIN: We believe so as well.

19 THE COURT: So I guess I would like to get submissions
20 on criminal history and the open case in Broward County.

21 How long do you think you need, Mr. Raskin?

22 THE DEFENDANT: We might need two months. I don't
23 know how easy it is to get these records.

24 MR. RASKIN: Exactly.

25 THE COURT: I don't know.

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1 MR. RASKIN: Can you give us three weeks and let us
2 try?

3 THE COURT: I will give you more than that if you
4 want.

5 THE DEFENDANT: We might need more than that.

6 MR. RASKIN: We may need more than that, your Honor.
7 These are old convictions.

8 THE COURT: All right.

9 Why don't you send me a letter in three weeks, tell me
10 how much time you think you need and when you think you would
11 be available for sentencing.

12 MR. RASKIN: Yes.

13 THE COURT: Depending on the answers, then I will
14 reschedule sentencing. At this point I'm likely to go above
15 guidelines. I'll tell you candidly. The sheer number of
16 convictions. The sheer repetitiveness of this conduct, the
17 absolute lack of respect for law and the fact that even a
18 federal sentence of 46 months didn't seem to have much of an
19 impact, all lead me conclude that this is a situation where an
20 upward departure is warranted from what the guidelines are.

21 So I just want everybody to be on notice about that.

22 OK. So you can address that in your submission if you
23 would like too. Now you have a better insight as to sort of
24 where my head is at.

25 MR. RASKIN: Yes. Thank you.

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1 THE COURT: OK. Three weeks I will hear from you and
2 then, depending on what you say, I'll either set a new date for
3 further submissions.

4 MR. RASKIN: Yes.

5 THE COURT: Or I'll set a new sentencing date, and you
6 will then come in.

7 MR. RASKIN: Thank you.

8 MS. KRAMER: Thank you, your Honor.

9 THE COURT: Ms. Kramer.

10 MS. KRAMER: I will be diligently working to sort out
11 the --

12 THE COURT: Why don't you submit something in three
13 weeks also. Then once I have both of your submissions, I will
14 then decide what's next.

15 OK?

16 MS. KRAMER: Thank you, your Honor.

17 MR. RASKIN: Thank you.

18 THE COURT: Mr. Capolongo, I am going to keep you out
19 on bail in the interim. So continue to abide by the conditions
20 of bail and then be in touch obviously with Mr. Raskin so that
21 you know what is going on.

22 OK?

23 MR. RASKIN: Yes, your Honor.

24 THE COURT: All right. Let's leave it at that.

25 Let me thank the court reporter. I will issue a short

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1 order just about the scheduling. We are not done yet.

2 THE DEFENDANT: I'm sorry.

3 THE COURT: Until I leave, you don't leave.

4 I think that is part of the problem here. There is a
5 sense that this is sort of like going to the DMV for you. You
6 have been in so many courtrooms with so many judges on so many
7 criminal cases that this is just sort of like a bank
8 transaction, and that's why I'm sort of inclined to think that
9 an above-guidelines sentence is absolutely appropriate.

10 So there is a mindset here that seems to think that
11 this is just par for the course. This is a way of doing
12 business, that you are going to continue engaging in illegal
13 gambling activity because that is what you do, and the rest of
14 us just have to adjust.

15 MR. RASKIN: Judge, I have --

16 THE COURT: That ain't going to work.

17 MR. RASKIN: I have spent a great deal of time with
18 Mr. Capolongo over the last couple of years, and he has been
19 taking this seriously.

20 THE COURT: I don't know. I don't get it.

21 I don't think that the history in front of me reflects
22 that. He seems like a nice guy. I'm sure we would enjoy each
23 other's company if we were watching a ballgame in a bar. But
24 we are not in a bar. We are in a courtroom, where I have a
25 criminal history that is, frankly, insulting.

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1 So to come in and say, Oh, he gets it now, this is a
2 come-to-Jesus moment is I just think preposterous. Eventually
3 he's going to age out of this criminal conduct, but I don't
4 think that will have anything doing with the criminal
5 sentences. It will just be biology and mortality.

6 Anyway, we'll see. You can address some of these
7 points, but I think this is a different case than the others
8 that I have seen.

9 OK. So thanks.

10 (Adjourned)